

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

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UNITED STATES OF AMERICA,

NO. CR. S-99-0433-04 WBS

Plaintiff,

v.

ORDER

THONGSOUK THENG LATTANAPHOM,

Defendant.

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The court has read and considered defendant Lattanaphom's motion for reconsideration of this court's oral order denying defendant's request to file certain documents under seal. The reasons for the court's order were expressed orally on the record at the time of the sentencing hearing on March 3, 2010. As the court indicated, the documents, originally provided by defendant Lattanaphom, were considered by the court in imposing sentence. As such, it was important that they be made a part of the record.

There is a presumption of public access to documents filed in connection with a criminal proceeding. United States v.

1 Suarez, 880 F.2d 626, 630 (2d Cir. 1989). As Judge Easterbrook  
2 put it in Krynicky v. Falk, 983 F.2d 74, 75 (7th Cir. 1992):

3       What happens in the halls of government is presumptively  
4       open to public scrutiny. Judges deliberate in private  
5       but issue public decisions after public arguments based  
6       on public records. The political branches of government  
7       claim legitimacy by election, judges by reason. Any  
8       step that withdraws an element of the judicial process  
9       from public view makes the ensuing decision look more  
10       like fiat; this requires rigorous justification.

11 Here, the court imposed a lengthy sentence upon the defendant,  
12 and the public is entitled to know all the reasons why.

13       Defendant has provided no persuasive reason to place  
14 the documents under seal. The proffered reason, that defendant  
15 fears retaliation by the other defendants if the fact that he  
16 made the letters known to the court is disclosed, is not  
17 supported by any evidence other than the statements of  
18 Lattanaphom himself, who for the reasons stated at the time of  
19 the sentencing hearing is not worthy of belief. The court finds  
20 Lattanaphom's professed fear of his co-defendants to be no more  
21 than a thinly veiled attempt to gain the sympathy of the court,  
22 and unfounded in reality.

23       The letters which defendant seeks to place under seal  
24 contain instructions from co-defendant John That Luong as to how  
25 Lattanaphom should testify at trial, and for the most part he  
26 followed those instructions. His testimony at trial carefully  
27 avoided inculcating his co-defendants, as he was instructed to  
28 do. Further, the letters were not made known to the court until  
after their author, John That Luong, had been sentenced, so that  
their disclosure had no adverse impact on him. There is no  
reason to infer from those facts that Luong, or anyone else,

1 would have any reason to retaliate against Lattanaphom.

2 Further, as discussed at the hearing on March 3, 2010,  
3 the letters, which are now known to counsel for the government  
4 may contain information which the government has a duty to disclose to  
5 other defendants under Brady v. Maryland, 473 U.S. 83 (1963). In that  
6 regard, the court finds Lattanaphom's suggestions that the court  
7 impose limitations on the United States Attorney which would permit  
8 disclosure to co-defendants' attorneys but preclude them from  
9 communicating the information to their clients to be unacceptable.

10 IT IS THEREFORE ORDERED that defendant Lattanaphom's motion  
11 to reconsider its order denying defendant's request to file documents  
12 under seal be, and the same hereby is, DENIED.

13 DATED: March 12, 2010

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15 WILLIAM B. SHUBB  
16 UNITED STATES DISTRICT JUDGE  
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